

ESTTA Tracking number: **ESTTA363844**Filing date: **08/18/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Michael Brandt Family Trust d/b/a Eco-Fresh Industries, Inc.
Granted to Date of previous extension	08/18/2010
Address	3001 Wheelock Street Suite A Dallas, TX 75220 UNITED STATES
Party who filed Extension of time to oppose	Michael Brandt Family Trust d/b/a Eco-Safe of Dallas
Relationship to party who filed Extension of time to oppose	The extension of time was erroneously filed under another dba of Michael Brandt Family Trust

Attorney information	BARTH X. DEROSA DICKINSON WRIGHT PLLC 1875 EYE ST NW STE 1200 WASHINGTON,, DC 20006 UNITED STATES bderosa@dickinsonwright.com, csquire@dickinsonwright.com, trademark@dickinsonwright.com
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Applicant Information

Application No	77867220	Publication date	04/20/2010
Opposition Filing Date	08/18/2010	Opposition Period Ends	08/18/2010
Applicant	Absopure Water Company 41605 Ann Arbor Road Plymouth, MI 48170 UNITED STATES		

Goods/Services Affected by Opposition

Class 032.


All goods and services in the class are opposed, namely: Drinking water; flavored beverages, namely, fruit flavored beverages and tea flavored beverages

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	76700740	Application Date	12/08/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ECOFRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: Odor absorbing bags; carpet deodorizers; carpet cleaner; odor absorbing granules, cat litter; cat litter freshener; deodorizing liquid cleaner and concentrate; pocket spritzer</p> <p>Class 035. First use: Distribution services, namely, offering technical assistance in the establishment and/or operations of businesses in the field of cleaning products and services</p>		


U.S. Application No.	76700741	Application Date	12/08/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ECO-FRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1988/08/10 First Use In Commerce: 1988/09/01 Carpet cleaner and deodorant; cat litter; cat litter fresheners; refrigerator packets for freshening; shoe packs; suitcase packs; drawer packs all for freshening; shoe and foot powders for freshening; leather and wardrobe fresheners</p> <p>Class 037. First use: First Use: 1988/08/10 First Use In Commerce: 1988/09/01 Carpet deodorizing services</p>		

U.S. Application No.	76700816	Application Date	12/11/2009
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ECOFRESH SAFE AND ECOFRIENDLY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: Odor absorbing bags; carpet deodorizers; carpet cleaner; odor absorbing granules, cat litter; cat litter freshener; deodorizing liquid cleaner and concentrate; pocket spritzer</p> <p>Class 035. First use: Distribution services, namely, offering technical assistance in the establishment and/or operations of businesses in the field of cleaning products and services</p>		

U.S. Registration No.	1557539	Application Date	10/26/1988
Registration Date	09/26/1989	Foreign Priority Date	NONE
Word Mark	ECO-FRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1988/08/10 First Use In Commerce: 1988/09/01 CARPET CLEANER AND DEODORANT</p> <p>Class 037. First use: First Use: 1988/08/10 First Use In Commerce: 1988/09/01 PEST CONTROL, JANITORIAL AND CARPET CLEANING SERVICES</p>		

U.S. Registration No.	1632840	Application Date	10/26/1988
Registration Date	01/29/1991	Foreign Priority Date	NONE
Word Mark	ECO-FRESH		

Design Mark	
Description of Mark	THE MARK CONSISTS, IN PART, OF A STYLIZED REPRESENTATION OF A BIRD, PINE TREES, SKY, MOUNTAINS, AND STREAM.
Goods/Services	Class 003. First use: First Use: 1988/08/10 First Use In Commerce: 1988/09/01 CARPET CLEANER AND DEODORANT Class 037. First use: First Use: 1988/08/10 First Use In Commerce: 1988/09/01 PEST CONTROL SERVICES JANITORIAL SERVICES CARPET CLEANING

Attachments	76700740#TMSN.gif (1 page)(bytes) 76700741#TMSN.gif (1 page)(bytes) 76700816#TMSN.jpeg (1 page)(bytes) 73760002#TMSN.gif (1 page)(bytes) 73760001#TMSN.gif (1 page)(bytes) 229-167 Notice of Opposition.PDF (6 pages)(156230 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Barth X. deRosa/
Name	Barth X. deRosa
Date	08/18/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____)	
MICHAEL BRANDT FAMILY TRUST)	
d/b/a ECO-FRESH INDUSTRIES, INC.,)	
)	Opposition No. _____
Opposer,)	
)	Application Ser. No. 77/867,220
v.)	
)	
ABSOPURE WATER COMPANY,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

In the matter of U.S. Trademark Application Serial No. 77/867,220 covering the mark "ENVIROFRESH" filed November 6, 2009 (International Class 32) under Section 1(b) by Absopure Water Company, a corporation doing business under the laws of the state of Michigan (hereinafter called "Applicant"), having a principal place of business at 41605 Ann Arbor Road, Plymouth, Michigan 48170, published April 20, 2010, time extended, Opposer, Michael Brandt Family Trust d/b/a Eco-Fresh Industries, Inc. (hereinafter called "Opposer"), a Trust organized under the laws of Texas, located and doing business at 3001 Wheelock Street, Dallas, Texas 75220-2944, believes that it will be damaged by registration of Application Serial No. 77/867,220 and hereby opposes the registration of the mark "ENVIROFRESH." The grounds for opposition under Section 2(d) of the Lanham Act, as amended, on information and belief, are as follows:

1. Since long prior to November 6, 2009, Applicant's alleged constructive use date, Opposer has, through its predecessor, been and is now engaged in the offering and selling of pest control and janitorial related services and also in the manufacture, distribution and sale of pest control and sanitary related products, including, but not limited to, carpet freshening preparations, flea control agents, liquid hand soaps, insecticides in spray, powder or liquid forms for domestic, commercial and industrial use, and pest control traps for rats, roaches and other pests, and has continuously used in interstate commerce in connection with such products and services the "ECO-FRESH" mark and name.

2. Since the 1990's, Opposer has licensed use of the mark ECO-FRESH on the following products:

- general purpose pouch
- refrigerator packet
- cat litter freshener
- carpet deodorizer
- shoe paks
- suitcase/drawer pak
- leather wardrobe freshener
- shoe and foot powder

Since expiration and termination of that license, Opposer is now engaged in the manufacture and distribution of the products and services in connection with the ECO-FRESH mark as described in each of the following applications:

- (a) Application No. 76/700,740
"ECOFRESH"
Filed: December 8, 2009

- (b) Application No. 76/700,741
“ECOFRESH”
Filed: December 8, 2009
- (c) Application No. 76/700,816
“ECOFRESH SAFE AND ECOFRIENDLY & Design”
Filed: December 11, 2009

3. Since long prior to November 6, 2009, Applicant's alleged constructive use date, Opposer did, through its various licensees, trade as Eco-Fresh and presently trades under said name.

4. Since long prior to November 6, 2009, Applicants' alleged constructive use date, Opposer did sell the products and services identified in paragraph 1 and 2 herein to customers in the United States in connection with the "ECO-FRESH" mark and name, and is presently using said mark and name in commerce.

5. Opposer relies upon and is the owner of the following registrations, all of which are valid, subsisting, unrevoked and, where applicable, incontestable.

- (a) Registration No. 1,557,539
“ECO-FRESH Stylized”
Dated: September 26, 1989
Renewed: April 24, 2009
- (b) Registration No. 1,632,840
“ECO-FRESH & Design”
Dated: January 29, 1991
Renewed: December 20, 2001

Certified status and title copies of the above registrations will be provided at a later date.

6. The intended products of Applicant, namely, drinking water; flavored beverages, namely, fruit flavored beverages and tea flavored beverages, are apt to move within similar channels of trade as the goods offered by Opposer and as described in paragraph 1 herein. Many of the products and services distributed and sold by Opposer under the ECO-FRESH mark and

name are likely to be purchased and used by the same class of persons who are likely to purchase Applicant's intended product. As a consequence, there is always a potential risk, for example, that the ECO-FRESH brand carpet deodorizer, which is sold in powder form, could perhaps be mistakenly used and substituted as an "ENVIROFRESH" brand drink mix if such persons are otherwise familiar with an "ENVIROFRESH" brand flavored beverage.

7. Applicant's intended mark "ENVIROFRESH" is so confusingly similar in terms of meaning and commercial impression to Opposer's ECO-FRESH mark and name, which the public and the trade have long associated and recognized with Opposer, as to be likely, when applied to the goods of the Applicant, to cause confusion or to deceive purchasers in the mistaken belief that the products of the Applicant emanate from, are offered for sale, or are sold under Opposer's approval, sponsorship, or control all to the great damage of Opposer, and/or generate a reverse confusion/mistake scenario as described in paragraph 6.

8. On information and belief, Applicant has made no use of the mark "ENVIROFRESH" in the United States for any product or service prior to November 6, 2009, which is Applicant's alleged constructive use date for the product listed in International Class 32.

9. Opposer has expended considerable time, effort and money in advertising and otherwise promoting the sale of its goods and services and encouraging the public and trade to recognize its ECO-FRESH mark and name, that unless refused, the registration obtained by Applicant will enable the Applicant to otherwise promote the "ENVIROFRESH" brand in such manner as to potentially cause reverse confusion and/or the mistaken substitution of either party's goods, and Opposer will suffer irreparable damage and injury as a result of the confusion and mistake that is likely to arise from its inability to control its reputation, as well as the activities and products of the Applicant.

WHEREFORE, Opposer, by and through its counsel, respectfully prays that the mark sought to be registered by Applicant be refused and the Notice of Opposition be sustained.


The \$300.00 government fee (Int. Class 32) is submitted herewith. Please charge any deficiency or credit any overpayment to Deposit Account No. 04-1061.

Please recognize Barth X. deRosa, Samuel D. Littlepage, Nicole M. Meyer, Jonathan Redway, Steven D. Lustig and Karen Kovacs, all members of a Bar, and the firm of Dickinson Wright PLLC, 1875 Eye Street, N.W., Suite 1200, Washington, D.C. 20006, as attorneys for Opposer.

Respectfully submitted,

MICHAEL BRANDT FAMILY TRUST
d/b/a ~~ECO-FRESH~~ INDUSTRIES, INC.

Dated: August 18, 2010

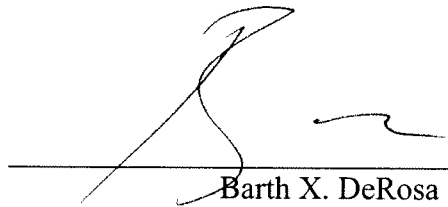


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Washington, D.C. 20006
Phone (202) 457-0160
Fax (202) 659-1559

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Notice of Opposition has been served upon Applicant on August 18, 2010, via first class mail, postage prepaid, as identified below:

Elizabeth F. Janda
Brooks Kushman P.C.
1000 Town Ctr., Fl. 22
Southfield, Michigan 48075-1183



Barth X. DeRosa